UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

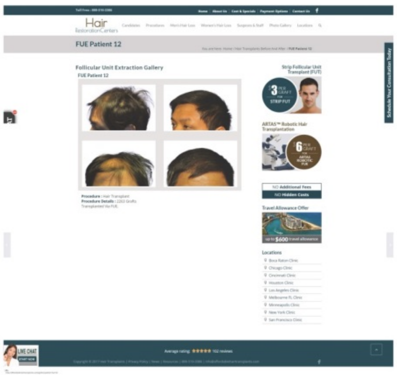
ADVANCED HAIR RESTORATION, LLC, Plaintiff, v. HAIR RESTORATION CENTERS, LLC, Defendant.	Case No.: COMPLAINT JURY DEMAND

Plaintiff Advanced Hair Restoration, LLC ("Advanced Hair Restoration"), brings this action against Hair Restoration Centers, LLC ("Defendant") for an injunction, damages, and appropriate relief to stop Defendant's infringement of Advanced Hair Restoration's copyrights. In support of its claims, Advanced Hair Restoration alleges as follows:

I. NATURE OF THE CASE

2263 Grafts Transplanted Via FUE.
Front Closeup View
Left Closeup View

Plaintiff's Copyrighted Photographs



Defendant's Website Advertisement

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SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

1. This case involves Defendant's intentional infringement of Advanced Hair Restoration's registered copyrights in certain photographs, and its attempt to confuse customers and compete unfairly in the hair transplant procedure business.

2. Advanced Hair Restoration is a nationally known and respected, Bellevue-based hair restoration clinic. Until early 2017, Advanced Hair Restoration was the only clinic in the country that utilized a highly effective Atera Follicular Unit Extraction ("FUE") system, which was developed by Advanced Hair Restoration in collaboration with Aseptico, a medical device manufacturer.

3. Advanced Hair Restoration has been recognized on numerous occasions for its hair restoration services and featured in national television broadcasts, including CNN, ABC, NBC, and by media persona Rachel Ray.

II. PARTIES

4. Advanced Hair Restoration is a hair restoration clinic located in Bellevue, Washington. Its doctors and staff have the most FUE surgical experience in the United States.

5. On information and belief, Defendant is a for-profit business located in Boca Raton, Florida.

6. Defendant is a competitor of Advanced Hair Restoration. Defendant solicits leads on customers through its use of Advanced Hair Restoration's copyrighted "before and after" photographs in its advertisements, and sells those leads to physicians willing to perform hair transplant surgery on customers who are misled by the pirated advertisements.

III. JURISDICTION AND VENUE

7. This is an action for copyright infringement and unfair business practices under chapter 19.86 RCW.

8. This Court has subject matter jurisdiction over Advanced Hair Restoration's copyright infringement claims pursuant to 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has supplemental jurisdiction over Advanced Hair Restoration's state law claims under 28 U.S.C. § 1367(a) because the state law claims are so related to Advanced Hair Restoration's federal question claims that they are part of the same case and controversy.

10. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

11. The Court has personal jurisdiction over Defendant because it has personally directed its unlawful activities to this judicial district and the State of Washington, and Advanced Hair Restoration's claims arise from those activities. Defendant copied and appropriated Advanced Hair Restoration's proprietary patient photographs from Advanced Hair Restoration's Washington-based website. Defendant expressly aimed its conduct at Washington because it (1) had actual or constructive knowledge of Advanced Hair Restoration's intellectual property rights, including Advanced Hair Restoration's copyrights, and Advanced Hair Restoration's residence in Washington where it controls its exclusive rights in its copyrights; (2) acted, at a minimum, with willful blindness to, or in reckless disregard of, Advanced Hair Restoration's rights, and in reckless disregard of the likelihood that it was infringing Advanced Hair Restoration's copyrights; and (3) knew or should have known its conduct would cause harm to Advanced Hair Restoration in Washington because it is foreseeable that infringement of Advanced Hair Restoration's rights would cause harm likely to be suffered in Washington, the state of Advanced Hair Restoration's residence.

IV. FACTUAL BACKGROUND

A. **Advanced Hair Restoration's Business and Intellectual Property**

12. Advanced Hair Restoration, through its network and team of physicians, is the industry leader in FUE transplant surgery.

13. Using the Atera FUE system and its own medical expertise, Advanced Hair Restoration has been able to generate between 30-60% better survival and growth rates for its patients, as compared to other FUE devices and clinics.

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14. These results come through Advanced Hair Restoration's significant investment in its business. Advanced Hair Restoration has invested around $15 million to build its reputation, its brand, and its medical devices.

15. Advanced Hair Restoration performs more FUE transplants than any other clinic in the country. Its experience and expertise in this procedure is unmatched.

16. Over the years that Advanced Hair Restoration has been performing hair transplants, it has amassed considerable goodwill among consumers. In particular, Advanced Hair Restoration has generated goodwill by its exceptionally successful FUE hair transplant surgery.

17. Advanced Hair Restoration's experience and technology has generated exceptional results in patients with hair loss. These results, which are specific to the FUE transplant procedure, are captured in accurate "before and after" photos of Advanced Hair Restoration's clients and used in Advanced Hair Restoration's national marketing efforts. Patients have traveled to Bellevue from all over the United States to benefit from Advanced Hair Restoration's transplant procedure.

18. In 2014, Advanced Hair Restoration took numerous photographs of its real patients, both before and after their FUE hair transplant procedures (the "2014 Photos").

19. Advanced Hair Restoration used the 2014 Photos, along with specific language describing the photographs, on its website located at <*www.advancedhair.com*>. This website incorporates original content and design, including the 2014 Photos.

20. Advanced Hair Restoration used the 2014 Photos in connection with Advanced Hair Restoration's services and, through extensive promotion and media exposure, have built up considerable positive reputation and goodwill associated with the 2014 Photos. These proprietary photos speak for themselves and are exclusively associated with Advanced Hair Restoration's services.

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21. Advanced Hair Restoration is the owner of a federal registration for the 2014 Photos, Copyright Reg. No. VA 2-035-093 (the "`093 Registration"). A true and correct copy of the `093 Registration is attached hereto as Exhibit 1.

22. Advanced Hair Restoration again took numerous "before and after" photographs of its real patients in 2017 (the "2017 Photos").

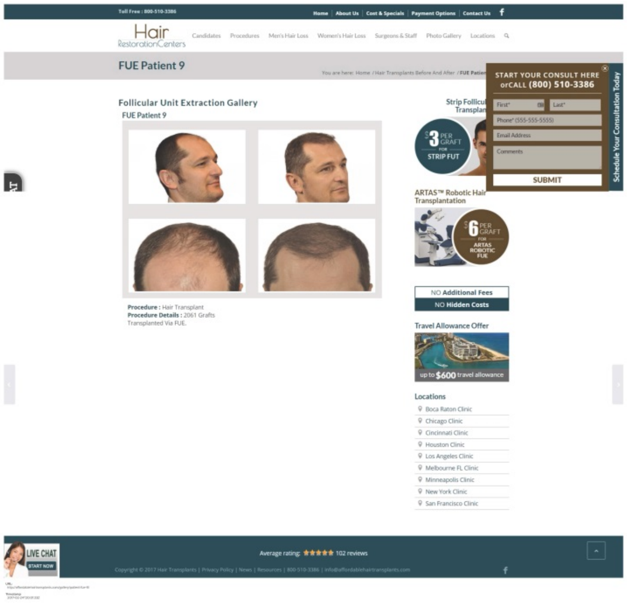
23. Advanced Hair Restoration is the owner of an application for a federal registration for the 2017 Photos, Case No. 1-4763355289.

B. **<u>Defendant's Infringing Actions</u>**

24. Like Advanced Hair Restoration, Defendant also advertises its hair restoration services on a national level. However, rather than develop their own expertise and advertise their own results, Defendant parasitically copied the 2014 Photos from Advanced Hair Restoration's website, exploiting Advanced Hair Restoration's hard work and creative efforts, creating customer confusion, and attracting unfair attention to Defendant's services.

25. Defendant operates a website located at <*www.affordablehairtransplants.com*>. This website incorporates material owned by Advanced Hair Restoration, including the 2014 Photos and verbatim language describing those photographs. For example:

www.advancedhair.com/before-after/male/193/fue-193
2061 Grafts Transplanted Via FUE.
Front-left View
Before
After
Top View
Before
After



FUE Patient 9
Follicular Unit Extraction Gallery
FUE Patient 9
SUBMIT
NO Additional Fees
NO Hidden Costs
Travel Allowance Offer
Locations
LIVE CHAT

Plaintiff's Copyrighted Photographs Defendant's Website Advertisement

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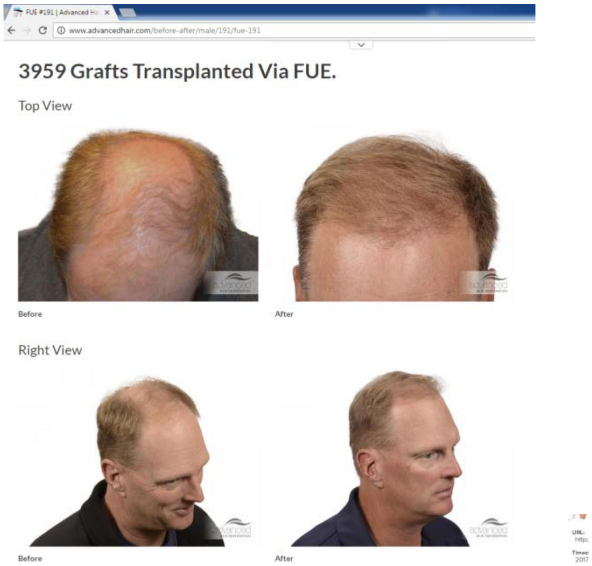
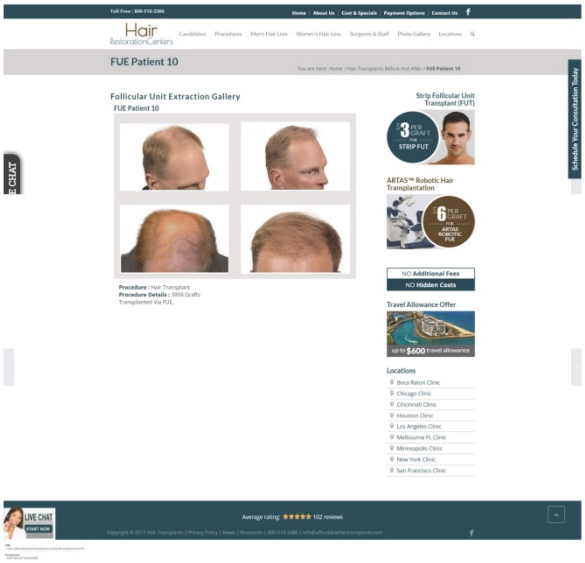
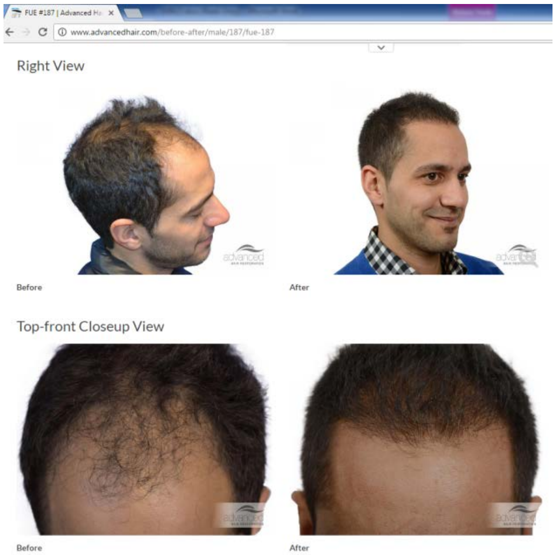
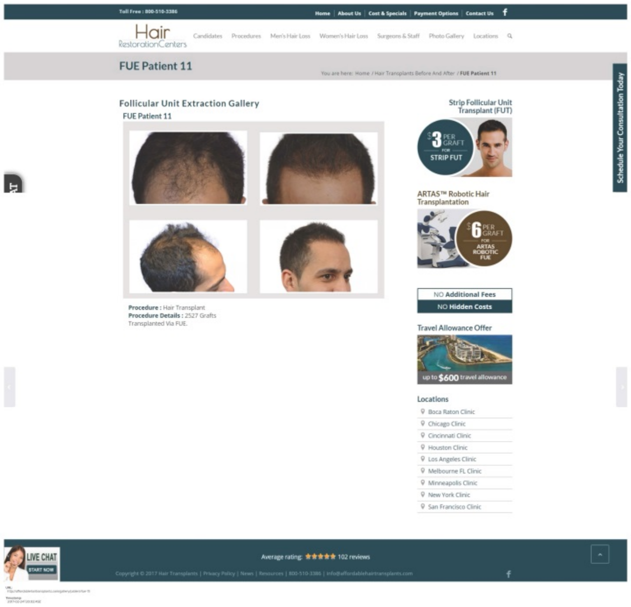

www.advancedhair.com/before-after/male/191/fue-191
3959 Grafts Transplanted Via FUE.
Top View
Before
After
Right View
Before
After


FUE Patient 10
Follicular Unit Extraction Gallery
FUE Patient 10
Strip Follicular Unit Transplant (FUT)
ARTAS™ Robotic Hair Transplantation
NO Additional Fees
NO Hidden Costs
Travel Allowance Offer
Locations

Plaintiff's Copyrighted Photographs Defendant's Website Advertisement


www.advancedhair.com/before-after/male/187/fue-187
Right View
Before
After
Top-front Closeup View
Before
After


FUE Patient 11
Follicular Unit Extraction Gallery
FUE Patient 11
Strip Follicular Unit Transplant (FUT)
ARTAS™ Robotic Hair Transplantation
NO Additional Fees
NO Hidden Costs
Travel Allowance Offer
Locations

Plaintiff's Copyrighted Photographs Defendant's Website Advertisement

26. Defendant copied these materials directly from Advanced Hair Restoration's website.

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27. Despite taking photographs of Advanced Hair Restoration's clients directly from Advanced Hair Restoration's website, Defendant advertises that the results shown in the photographs on its website are attributable to Defendant's own physicians performing Defendant's surgical procedures.

28. Of the three "patient example result" photos displayed on Defendant's website's "landing page," defined as the primary sales page and the page that most Google searches direct to, all three photographs belong to Advanced Hair Restoration.

29. Defendant's website specifically infringes on the `093 Registration.

30. Defendant has neither sought nor received a license from Advanced Hair Restoration for any purpose, whatsoever.

31. Defendant has been and continues to infringe on Advanced Hair Restoration's intellectual property rights by committing and continuing to commit acts of copyright infringement. On information and belief, Defendant's acted willfully in infringing on Advanced Hair Restoration's copyrights.

32. Using the 2014 Photos, Defendant advertises that it offers Advanced Hair Restoration's transplant procedure, expertise, and results for a lower cost.

33. Over the last three years, Advanced Hair Restoration's national client base has substantially diminished. This loss is directly attributable to Defendant's false claims that it offers the same procedure, expertise, and results for a lower cost.

34. Advanced Hair Restoration is not the only victim of Defendant's infringement. Consumers are also victims, as they may be deceived by Defendant's surgeons who falsely represent Advanced Hair Restoration's procedures and results as their own. These consumers may unwittingly expose themselves to the risks associated with surgery by less experienced and/or accomplished surgeons.

35. Defendant's doctors do not have Advanced Hair Restoration's doctors' experience in hair restoration procedures, generally, or in FUE, specifically.

36. Defendant does not utilize Advanced Hair Restoration's Atera FUE system.

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37. Defendants' actions create additional risks for consumers, who may not be aware that they will not be receiving the same procedure as the patients in Defendant's infringing advertising.

FIRST CLAIM
COPYRIGHT INFRINGEMENT — 17 U.S.C. § 501 *et seq.*

38. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. Advanced Hair Restoration is the sole owner of the 2014 Photos, and the corresponding copyrights and Certificate of Registration with the registration number listed above. Accordingly, Advanced Hair Restoration has the exclusive right to reproduce, to prepare derivative works based upon, and to distribute the 2014 Photos.

40. Defendant has infringed on Advanced Hair Restoration's copyright by reproducing the 2014 Photos in the United States of America without approval or authorization from Advanced Hair Restoration.

41. At a minimum, Defendant acted with willful blindness to, or in reckless disregard of, Advanced Hair Restoration's copyrights.

42. As the result of Defendant's wrongful conduct, Advanced Hair Restoration is entitled to recover its actual damages and Defendant's profits attributable to the infringement.

43. Advanced Hair Restoration is further entitled to injunctive relief and an order impounding all infringing materials. Advanced Hair Restoration has no adequate remedy at law because, among other things: (a) Advanced Hair Restoration's copyrights are unique and valuable property that have no readily determinable market value; (b) Defendant's infringement is causing ongoing harm to Advanced Hair Restoration's reputation and goodwill such that Advanced Hair Restoration could not be made whole by any monetary award; and (c) Defendant's wrongful conduct, and the resulting damage to Advanced Hair Restoration, is continuing.

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SECOND CLAIM
WASHINGTON CONSUMER PROTECTION ACT — RCW 19.86 *et seq.*

44. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 43 as if fully set forth herein.

45. Defendant's continued use of Advanced Hair Restoration's copyright constitutes unfair competition and a deceptive practice under the Washington Consumer Protections Act by, *inter alia*, creating a likelihood of confusion as to the source or sponsorship of the services provided by Defendant and/or Advanced Hair Restoration; by misappropriating Advanced Hair Restoration's goodwill represented by the FUE procedure and the 2014 Photos, thereby injuring that reputation and goodwill; and by diverting from Advanced Hair Restoration the benefits arising therefrom.

46. The actions and conduct of Defendant complained of herein have damaged Advanced Hair Restoration and will continue to damage the business, market, reputation, and goodwill of Advanced Hair Restoration.

47. Defendant's unlawful actions affect the public interest in Washington because unfair or deceptive practices in the practice of medicine, including deceptive marketing of surgical procedures, affect the public interest.

48. On information and belief, Defendant has engaged in and continues to engage in these activities knowingly, willfully, and deliberately.

49. Advanced Hair Restoration has no adequate remedy at law, and is suffering irreparable harm and damage as a result of Defendant's ongoing acts in an amount to be determined at trial, to include treble damages as well as Advanced Hair Restoration's attorneys' fees and costs incurred in bringing this action. *See* RCW 19.86.090.

THIRD CLAIM
UNFAIR COMPETITION — 25 U.S.C. § 1125

50. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 49 as if fully set forth herein.

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51. Defendant's continued use of Advanced Hair Restoration's patient "before and after" photographs constitutes unfair competition by, *inter alia*, creating a likelihood of confusion as to the source or sponsorship of the surgical services provided by Defendant and/or Advanced Hair Restoration; by misappropriating Advanced Hair Restoration's goodwill represented by the FUE procedure and the 2014 Photos, thereby injuring that reputation and goodwill; and by diverting from Advanced Hair Restoration the benefits arising therefrom, all in violation of 25 U.S.C. § 1125(a).

52. Advanced Hair Restoration has no adequate remedy at law, and is suffering irreparable harm and damage as a result of Defendant's ongoing acts in an amount to be determined at trial, but believed to be in excess of $75,000.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Advanced Hair Restoration prays for the following relief:

1. That Defendant, its agents, servants, employees, attorneys, and those in active concert or participation with them, be enjoined or restrained from:

   a. Imitating, copying, reproducing, preparing a derivative work from, or distributing in any infringing manner the 2014 Photos and Advanced Hair Restoration's other intellectual property, including but not limited to the photos identified in the Copyright Registration Number listed above and in the manner complained of herein;

   b. Using any simulacrum, reproduction, counterfeit, copy, or colorable imitation of Advanced Hair Restoration's 2014 Photos, including but not limited to the photos identified in the Copyright Registration Numbers listed above and including in the manner complained of herein;

   c. Engaging in any other activity constituting an infringement of Advanced Hair Restoration's copyrights, or of Advanced Hair Restoration's rights in or right to use or to exploit these copyrights; and

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d. Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above;

2. That the Court enter an order pursuant to 17 U.S.C. § 503 impounding all counterfeit and infringing copies of Advanced Hair Restoration's copyrighted materials;

3. That the Court enter an order declaring that Defendant hold in trust, as constructive trustees for the benefit of Advanced Hair Restoration, the illegal profits obtained from their infringing activities and requiring Defendant to provide Advanced Hair Restoration a full and complete accounting of all amounts due and owing to Advanced Hair Restoration as a result of Defendant's unlawful activities;

4. That Defendant be required to pay all general, special, actual, and statutory damages that Advanced Hair Restoration has sustained or will sustain as a consequence of Defendant's unlawful acts, and that such damages be trebled as provided for by RCW 19.86.090;

5. That Defendant be required to pay Advanced Hair Restoration both the costs of this action and the reasonable attorneys' fees incurred by Advanced Hair Restoration in prosecuting this action as provided for by RCW 19.86.090 and federal law;

6. That the Court grant Advanced Hair Restoration such other, further, and additional relief as the Court deems just and equitable.

JURY DEMAND

Advanced Hair Restoration requests a jury trial on all issues so triable.

DATED this 5th day of May, 2017.

By: s/Leslie C. Ruiter
By: s/Lance A. Pelletier
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Lance A. Pelletier (WSBA #49030)
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